

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The El Paso Telephone Company and	:	
Sprint Spectrum L.P., a Delaware limited	:	
partnership, as agent for WirelessCo, L.P.,	:	
a Delaware limited partnership; SprintCom,	:	
Inc., a Kansas corporation, Sprint PCS	:	
License, L.L.C., a Delaware limited liability	:	
company; APC PCS, LLC, a Delaware	:	05-0788
limited liability company, and PhillieCo,	:	
L.P., a Delaware limited partnership (Sprint	:	
PCS) and Nextel Operations, Inc., a	:	
Delaware corporation (Nextel)	:	
	:	
	:	
Joint Petition for Approval of Negotiated	:	
Traffic Termination Agreement dated	:	
effective April 29, 2005, pursuant to 47	:	
U.S.C. § 252.	:	

ORDER

By the Commission:

I. PRELIMINARY MATTERS

On December 12, 2005, pursuant to 83 Illinois Administrative Code Part 763, El Paso Telephone Company ("El Paso") and WirelessCo., L.P., ("Wireless") and SprintCom, Inc. ("Sprint") filed a joint request for approval of their Negotiated Interconnection Agreement, dated April 29, 2005, pursuant to 47 U.S.C. Secs. 252(a)(1) and 252(e) of the Telecommunications Act of 1996, 47 U.S.C. Sec. 151, *et seq.* ("the Act").¹ The Agreement was submitted with the request. A statement in support of the request was filed, along with verifications sworn to by John LaPenta, on behalf of El Paso, and Douglas Puckett, on behalf of Sprint and Wireless, stating that the facts contained in the request for approval were true and correct.

¹ The Petitioners filed an Amended Complaint on January 6, 2006, pursuant to leave granted by the Administrative Law Judge. In that Amended Petition, the Petitioners excluded the additional entities listed in the caption above.

Pursuant to notice in accordance with the Commission's rules, a hearing convened in this docket on January 13, 2006. Staff filed the Verified Statement of A. Olusanjo Omoniyi, a Policy Analyst with the Commission's Telecommunications Division, who recommended approving the Agreement. At the conclusion of the January 13, 2006 hearing, the record was marked "Heard and Taken."

II. SECTION 252 OF THE TELECOMMUNICATIONS ACT

Section 252(a)(1) of the Act allows parties to enter into negotiated agreements regarding requests for interconnection, services or network elements. The parties have negotiated such an Agreement and they have submitted it for approval in this proceeding. (47 U.S.C. Sec. 252(a)(1)).

Section 252(e)(1) provides, in part, that "[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State Commission." This Section further provides that a State Commission to which such an agreement is submitted "shall approve or reject the agreement, with written findings as to any deficiencies." (47 U.S.C. Sec. 252(e)(1)). Section 252(e)(2) provides that the State Commission may only reject the negotiated agreement if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or that "the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity." Section 252(e)(4) provides that the agreement shall be deemed approved if the State Commission fails to act within 90 days after submission by the parties. (47 U.S.C. Secs. 252(e)(2) and (e)(4)).

Section 252(h) requires a State Commission to make a copy of each agreement approved under subsection (3) "available for public inspection and copying within 10 days after the agreement or statement is approved." (47 U.S.C. Sec. 252(h)).

Section 252(i) requires a local exchange carrier to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." (47 U.S.C. Sec. 252(i)).

III. THE AGREEMENT

The Agreement establishes the financial and operational terms for the reciprocal compensation between the parties for traffic terminated on the carriers' networks. It expires two years for its effective date. However, while the Petition in this docket was filed in December of 2005, the Agreement became effective on April 29, 2005.

IV. STAFF'S POSITION

Staff has reviewed the Agreement based on the standards set forth in Section 252(e)(2) of the Act. Under this Section, the Commission may only reject an agreement, or any portion thereof, adopted by negotiation under subsection: if it finds that (i) the agreement, or any portion thereof, discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of such agreement, or a portion thereof, is not consistent with the public interest, convenience and necessity.

Staff recommended that the Commission approve the Agreement, for the reasons set forth in the Verified Statement of Mr. Omoniyi. Mr. Omoniyi averred that the Agreement meets the standards set forth in the Act and that it is consistent with the public interest. Staff concluded that, since similarly-situated carriers can enter into essentially the same contract, the Agreement should not be deemed to be discriminatory. Staff concluded that the Agreement does not discriminate against a telecommunications carrier that is not a party to the Agreement and that the implementation of the Agreement would not be inconsistent with the public interest, convenience or necessity. No party contended that the Agreement is discriminatory or contrary to the public interest.

Staff also recommended that the Commission require El Paso to, within five (5) days from the date upon which the Agreement is approved, modify its tariffs to include the negotiated agreement for each service provided. Also, the Chief Clerk should place the Agreement on the Commission's web site under "Interconnection Agreements." Staff's recommendations are reasonable and they should be adopted.

Staff averred that the effective date of the Agreement was approximately six months before the agreement was submitted for Commission approval. Staff's concern is duly noted. Counsel for the petitioners are advised that in the future, this Commission will not tolerate the submission of negotiated agreements when they are submitted so late. While this Commission is not requiring parties to file negotiated agreements and amendments immediately after their execution, over six months is simply too long a period of time from execution of an agreement to petitioning for approval of that agreement. Such a delay could frustrate one of the goals of the Act, which is to promote competition in telecommunications.

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) El Paso Telephone Company, WirelessCo., L.P., and SprintCom, Inc., are "telecommunications carriers" as is defined in Section 13-202 of the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties hereto and of the subject matter hereof;

- (3) El Paso Telephone Company, WirelessCo., L.P., and SprintCom, Inc., have entered into an Agreement, which has been submitted to the Commission for approval under Section 252(e) of the Telecommunications Act of 1996;
- (4) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (5) the Agreement between these petitioners does not discriminate against a telecommunications carrier that is not a party to the Agreement and it is not contrary to the public interest, convenience and necessity;
- (6) in order to assure that the Agreement is in the public interest, El Paso Telephone Company must implement the Agreement by filing, within five (5) days from the date upon which the Agreement is approved, a verified statement with the Chief Clerk of the Commission, stating that the approved Agreement is the same as the Agreement that was filed in this docket with the Verified Petition. The Chief Clerk shall place the Agreement on the Commission's web site under "Interconnection Agreements;"
- (7) El Paso Telephone Company must also must also place replacement sheets in its tariffs at the following location: "Agreements with Telecommunications Carriers:" Ill. C.C. No. 12, Section 14;
- (8) the Agreement should be approved;
- (9) approval of the Agreement does not have any precedential effect on any future negotiated agreements or Commission Orders.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Agreement, dated April 29, 2005, between El Paso Telephone Company, WirelessCo., L.P., and SprintCom, Inc., is approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that El Paso Telephone Company shall comply with findings (6) and (7) of this Order within five days of the date of this Order.

IT IS FURTHER ORDERED that this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 25th day of January, 2006.

(SIGNED) CHARLES E. BOX

Chairman